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Customer No. 22,852
Attorney Docket No. 05552.1463

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Udo KRUPKA)
Application No.: 10/561,345)
PCT Filed: June 17, 2004) Group Art Unit: 1648
§ 371 Date: December 20, 2005) Examiner: Bo PENG
For: NOVEL SURFACE PROTEIN (HBsAg))
VARIANT OF THE HEPATITIS B) Confirmation No.: 5930
VIRUS)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

RESPONSE TO ELECTION OF SPECIES REQUIREMENT

Applicants respond to the Restriction Requirement mailed on March 25, 2008. Claims 24-42 are currently pending in this application. Applicants have elected Group I, claims 24-35 and 40, which are drawn to the technical feature of a peptide of an HBsAg variant. Applicants also elected the species of SEQ ID NO: 12.

In a restriction requirement dated March 25, 2008, the Office required a further species election under 35 U.S.C. § 121 and PCT Rule 13.1 between:

A peptide which contains

1. ONE specific amino acid position of SEQ ID NO: 12; or
2. ONE basic combination of amino acid positions of SEQ ID NO: 12 recited in claims 28 and 31.

Applicants provisionally elect, with traverse, to prosecute an oligopeptide or polypeptide comprising at least 5 consecutive amino acids from SEQ ID NO:12 and

comprising the sequence TRTST, which spans amino acid positions 72 to 76. All of claims 29-42 encompass this elected species.

This restriction and election of species requirement between claims 28 and 31 is improper because all of the claims are “so linked as to form a single general inventive concept” according to PCT Rule 13.1, and because claims 24-42 all contain “the same or corresponding special technical features” under PCT Rule 13.2, and therefore possess the required technical relationship for unity of invention and share SEQ ID NO:12, which is a special technical feature. Both claims 28 and 31 share SEQ ID NO: 12. In other words, the sequences share the special technical feature of being part of SEQ ID NO:12. Accordingly, Applicants respectfully submit that examining all the species together would not be improper, nor would it impose a serious burden, and request that the new species election be withdrawn.

Alternatively, if the Office chooses to maintain the election requirement, Applicant expects the Office to continue to examine the full scope of the claimed subject matter to the extent necessary to determine the full scope of the patentability thereof, *i.e.*, extending the search to the non-elected species, in accordance with 37 C.F.R. § 1.141.

Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: April 24, 2008

By: Rebecca M. McNeill
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